PUBLIC PROSECUTOR v. LIM TEE LECK

[O.Cr.J. (Kulasekaram and D'Cotta JJ.) April 7, 1978]
[Singapore — Criminal Case No. 40 of 1977]

Misuse of Drugs — Trafficking in controlled drug — Charge of trafficking in 18.05 gms. of diamorphine — Dispute as to weight — Examination of methods used for analysis of diamorphine — Misuse of Drugs Act, 1973, ss. 3(a), 29.

Criminal Law and Procedure — Trafficking in controlled drug — Charge of trafficking in 18.05 gms. of diamorphine — Dispute as to method of assessment and actual weight — Benefit of doubt given to accused.

The accused in this case was charged with trafficking in 18.05 gms. of diamorphine, a controlled drug under the Misuse of Drugs Act 1973, an offence under section 3(a) and punishable under section 29 of the Misuse of Drugs Act.

The defence disputed, *inter alia*, the actual weight of the diamorphine. Under section 3 of the said Act the punishment for a quantity more than 15 gms. would be different from that for amounts less than 15 gms. but more than 10 gms.

The methods used to arrive at the quantity of diamorphine were the gas chromatography method and the colorimetric method by the use of sodium nitrite.

Held: (1) in borderline cases such as this, where the chromatogram suggested further investigation, such further investigation could have resolved any doubt that existed;

(2) the accused should be given the benefit of the doubt as the amount of diamorphine analysed could well be below 15 gms. but more than 10 gms.

CRIMINAL CASE.

Lawrence Ang (Deputy Public Prosecutor) for the Prosecution.

Amarjit Singh for the defence.

Kulasekaram J.: Ask the Accused to stand up.

The accused here stands charged that he on or about the 5th of January, 1977, at about 4.00 p.m., behind a bus shelter along Airport Road, Singapore, not being authorised under the Misuse of Drugs Act, 1973, or the regulations made thereunder, did traffic in a controlled drug specified under Class 'A' Part I of the First Schedule of the Misuse of Drugs Act, 1973, to wit 18.05 grams of diamorphine, and he thereby committed an offence under section 3(a) and punishable under section 29 of the Misuse of Drugs Act.

You have stood your trial on this Charge and I propose to set out our findings briefly.

There is no serious dispute on a number of facts in the Prosecution case. It is not in dispute that on the 5th of January, 1977, at about 4.00 p.m. the two boys, Ong Cheng Peng and Chng Pang Joan, along with two other boys, went by taxi to Airport Road and alighted at the second bus shelter from the junction of Airport Road and Paya Lebar Road, as one proceeds from that junction along Airport Road towards the Airport. There, Ong and Chng went behind the bus shelter and met a male Chinese who had himself arrived there having walked along the pavement of Airport Road from the opposite direction, that is from the Airport side, towards this bus shelter at around the same time, while the other two boys remained at the bus shelter.

Ong gave this male Chinese some money, in particular $570, and in return that male Chinese gave a small parcel wrapped in Chinese newspaper, which was produced as Exhibit P14, to Chng. The two boys then returned to the bus shelter and joined the other two companions there and all four boys walked across the road to the other side of Airport Road towards a bus shelter on that side. Meanwhile, the male Chinese was seen returning along the way he had earlier come. All this was observed by two Chinese narcotics officers, Lio and Chew, who had been keeping watch on this bus shelter from the opposite side of Airport Road from the compound of a house there.

As the boys walked towards the bus shelter, Lio and Chew also came out from their observation position and followed the boys. As they reached the bus shelter a bus arrived and all the four boys got into it and one of the narcotics officers, Lio, just managed to get into the bus while it pulled off, while Chew was too late to catch the bus and was left behind.

Lio observed that one of Chng's trouser pockets was bulging and went up to him and questioned him. By then the bus had pulled up at the next bus-stop and the other three boys hurriedly got out of the bus, sensing trouble. Lio and Chng then got off the bus at the subsequent bus-stop, where Lio searched Chng and recovered the parcel P14, which when opened up contained three plastic packets filled with a grey-brownish substance, powder. This greyish-brown powder was suspected to contain heroin and was sent to the Department of Scientific Services for analysis.

Mr. Lim Han Yong, the Senior Scientific Officer, analysed the substance in these three plastic packets and found it to contain diamorphine which is commonly known as heroin.

You, the accused, were then arrested on the 14th of January, 1977, and charged in respect of this offence.

On these facts there is no dispute.

The Prosecution, in addition, say that the male Chinese who sold the parcel to the two boys, Ong and Chng, was the accused, that is you. They further say that the greyish-brown substance in P14, that is the parcel, when examined and weighed by Mr. Lim Han Yong, was found to weigh 38.02 grams and when analysed by him it was found to contain diamorphine and the diamorphine content in the powder, weight for weight, was 47.5%, which really means that the weight of the diamorphine content in the powder weighed 18.05 grams.

The only issues in dispute raised by the defence are, that you, the accused, had been wrongly identified as that male Chinese who was involved in this transaction, and that the diamorphine content as stated by Mr. Lim was erroneous and excessive and on a proper analysis would probably have given a figure of less than 15 grams.

The real question here is: was the diamorphine content in the greyish-brown powder contained in P14 less than 15 grams or more than 15 grams? That really is the issue here. Under section 3 of the Misuse of Drugs Act the punishment for a quantity more than 15 grams is different from that for amounts less than 15 grams but more than 10 grams.

On the first issue, the accused, that is you, said that you were never on the scene and not in any way connected with the transaction. Having carefully considered the evidence as a whole, we are satisfied

that you, the accused, had been properly identified as the person who was involved in the transaction behind the bus shelter on the day in question with the two boys. The two narcotics officers were quite positive about your identity and so, too, the two boys, and in addition another boy, Lee, who was one of the companions who had remained behind in the bus shelter and who had also seen the transaction that took place behind the bus shelter between the two boys and the male Chinese.

In addition, you, the accused, made a statement to one of the narcotics officers — I think the officer was Mr. Teo — after you had been given the necessary warning under section 121 subsection (6) of the Criminal Procedure Code. We are quite satisfied that you had then made a voluntary statement and in that statement you quite clearly admitted that you were the person involved in the transaction that afternoon. We accept that as a truthful statement.

We come to the next issue raised by the defence. They say that Mr. Lim's, the Scientific Officer's, findings here, that the amount of diamorphine in the brownish substance found in the parcel was 18.05 grams, was inaccurate and over-estimated.

Mr. Lim in his evidence said that he used two methods to arrive at this quantitation of heroin in the given sample. The first method was the gas chromatography method, and the second was the colorimetric method by the use of sodium nitrite. It is common ground that the gas chromatography method — hereafter referred to as the G.C. method — is far more reliable than the sodium nitrite method which is not so specific and the margin of error is also greater here. In the G.C. method the quantification of diamorphine was arrived at by calculating the area of the diamorphine peak in the chromatogram and matching it against the corresponding readings on a calibration graph obtained in respect of a standard compound.

Dr. Das, an expert called by the defence, complained that the chromatogram which Mr. Lim obtained for the purpose of this method was unsatisfactory. Firstly, the various peaks for the different compounds, and in particular the peak for diamorphine in Exhibit D2, Diagram 1, was not symmetric in shape, had tailings and shifting base lines. The chromatogram also had spikes. The spiking by itself showed that the G.C. instrument, the instrument of the G.C. system, was not functioning properly. In addition, the tailings suggested either that the G.C. system was not functioning properly or that the supposed diamorphine peak was not a pure diamorphine peak but also represented other compounds under the peak. In this particular case, he suggested that there was a likelihood of a phenolic compound, 'bound' phenolic compounds, under the peak.

Dr. Das was of the opinion that the shape of the diamorphine peak here with unsatisfactory tailings should have put Mr. Lim on inquiry as to whether there could be any other compound included in the diamorphine peak. He should have carried out further investigations to rule out the presence of other compounds and impurities. Dr. Das himself suggested various ways of how this could have been done. He went on further to say, this was particularly unsatisfactory because Mr. Lim had used only one column and not three or more columns of different packings in carrying out this procedure.

Mr. Lim had also used a three-foot column, whereas one would have expected normally to find for such a type of investigation a column six feet in length. This could have helped to separate the peaks regarding different compounds. The standard calibration curve in connection with this investigation was prepared two or three days beforehand instead of being done at almost the same time as the experiment itself and is by itself a significant irregularity.

In respect of the colorimetric method, too, the result arrived at did not rule out the presence of 'bound' phenolics. We do not propose to go further into this method because although we had the assistance of another expert, Dr. Sit, since this method in itself is not so specific and not so accurate, we think it not necessary to comment further on this method.

The Prosecution in their cross-examination of Dr. Das suggested that, having regard to the fact that the sample in question contained diamorphine which in its preparation itself would have eliminated such 'bound' phenolic compounds and therefore the presence of any impurities or any compounds under the diamorphine peak would be of insignificant quantities, and would not seriously affect the result.

While we agree where a large amount of diamorphine is concerned the methods employed by Mr. Lim cannot be questioned, but in borderline cases such as this, where the chromatogram suggested further investigation, we are of the opinion that such further investigation could have resolved any doubt that existed.

In the circumstances of this case we accept the defence contention and rule that the amount of heroin analysed could well be below 15 grams but more than 10 grams. In the circumstances here, we feel the accused should be given the benefit of the doubt and we therefore reduce the charge to one in respect of an amount of diamorphine below 15 grams and more than 10 grams.

We find you guilty on the amended charge and accordingly convict you.

Kulasekaram J.: Anything known against him?

D.P.P.: No, my Lords.

Kulasekaram J.: We sentence you to —

Amarjit Singh: My Lord, May I say something? — Your Lordships have the scale. He is 27 years old now, my Lords, he is married and has one child and, my Lords, I would urge your Lordships not to impose the top of the scale in view of the fact that he is only a 'pusher' with less than 15 grams, and the top of the scale is normally reserved for the worst of crimes.

D'Cotta J.: What is the minimum?

Amarjit Singh: Minimum is 20.

Kulasekaram J.: We sentence you to 20 years' imprisonment and 15 strokes of the rotan.

Order accordingly.

Solicitors: *David Marshall.*